

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 26 of 1984

with

FIRST APPEAL No 27 of 1984

with

CIVIL APPLICATION NOS.60 AND 62 OF 1984

with

CROSS OBJECTIONS

in

FIRST APPEAL No 26 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

PRITAMSINGH CHANNANSINGH

Appearance:

1. First Appeal No. 26 of 1984

MR SB VAKIL for Petitioner

MR AY PATHAN for Respondent No. 1

NOTICE SERVED for Respondent No. 3

NOTICE UNSERVED for Respondent No. 4

2. First AppealNo 27 of 1984

MR SB VAKIL for Petitioner

MR AY PATHAN for Respondent No. 1

NOTICE SERVED for Respondent No. 2

NOTICE UNSERVED for Respondent No. 4

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

Date of decision: 17/08/2000

ORAL JUDGEMENT

Both these appeals, under section 110-D of the Motor Vehicles Act, 1939, at the instance of the appellant, original opponent No.3, Insurer, are against the common judgment and awards passed in MACP Nos.448/82 and 449/82 by Motor Accident Claims Tribunal (Main), Panchmahals, Godhra, on 10.6.83.

First Appeal No.26/84 has arisen out of MACP No.448/82 filed by the parents of deceased Surendrasinh claiming an amount of Rs.1,16,000/-, wherein, the Tribunal awarded an amount of Rs.71,200/- with interest and cost and First Appeal No.27/84 has arisen out of MACP No.449/82 filed by mother of deceased Ajmalsingh, wherein, the award came to be passed for Rs.23,900/- against the claim of Rs.35,800/-. Since both these appeals arise out of common judgment in respect of same accident, they are being disposed of by this common judgment.

An unfortunate road accident took place, on 24.3.92 at about 9.00 p.m. at Kadana Dam site involving a motor truck No.GTD 3943 driven by one, Ratansinh and owned by one firm Manibhai & Brothers and insured with New India Insurance Company, appellant in both the appeals. On account of the accident, two persons lost their lives. In the first petition, parents of deceased Surendrasinh and in the second petition mother of deceased Ajmalsingh claimed the aforesaid amount of compensation on the ground that the driver of the truck Ratansinh was rash

and negligence and was responsible for the accident. The opponents in the claim petitions contested the claims challenging the averments made in the petitions. They contended that the driver of the truck was not rash and negligent and responsible for the accident, but the truck all of a sudden, fell and the driver informed the labourers travelling in the truck to jump down from the truck in order to save their lives. All the persons in the truck, except deceased persons listened to the request of the driver. The deceased persons did not listen to the request and, therefore, they suffered and paid the penalty on account of their carelessness.

After considering the facts and circumstances, the Tribunal found, by passing a common judgment, that the driver of the truck was rash and negligent and responsible for the accident. Deceased Surendrasingh and deceased Ajmalsingh, who were unmarried, were travelling in the offending truck at the relevant time and sustained injuries and succumbed to the same and the claimants came to be awarded amount, as stated above, by the Tribunal.

After having taken into consideration the facts and circumstances emerging from the record of the present case and the submissions raised before us and the relevant proposition of law governing the grant of amount of compensation on account of tortious liability arising out of a vehicular accident, we are of the opinion that both the appeals, cross objections and the Civil Applications requesting for leading additional evidence to prove the contention that the driver of the truck was not holding a valid licence, at the relevant time, are not sustainable. In our opinion, the amount awarded by the Tribunal is, rightly, therefore, not questioned at the instance of the insurer in appeals. The only contention which is advanced before us, on behalf of the insurer is that the Insurance Company cannot be fastened with the liability as the driver of the truck engaged by the insured, at the relevant time, was not holding a valid and legal licence to drive the vehicle, which was involved in the accident. This contention is raised for the first time in the appeals. It does not find any place in the written statement. Obviously, therefore, no issue came to be framed and no adjudication was called for on this question. The sole contention about the liability of the Insurance Company on the alleged ground that the driver was not having a legal and valid licence could not be said to be a pure question of law. It is a question which requires investigation of facts. The claim petitions came to be filed in 1982. We are in the second half of 2000. Considering the period which is

elapsed in between, coupled with the fact that the contention which could have been adjudicated, at the relevant time, before the Tribunal, had not been raised and the fact that it requires factual investigation of record, we do not deem it expedient to accept the sole contention and for that purpose to permit them lead evidence on the analogous principles of Order 41 Rule 27 of the Code of Civil Procedure. We may state, at this stage, that there is a purpose and policy behind the principles laid down in Order 41 Rule 27. If in a given case, the Court is satisfied and the case falls within the statutory parameters prescribed in Order 41 Rule 27, the party could be permitted to produce and lead additional evidence in the appellate Court. Order 41 Rule 27 reads as under:

"27. Production of additional evidence in Appellate Court - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have admitted, or
 - (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
- (b) the Appellate Court requires any document to be produced, or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

- (2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

It is, very, clear from the aforesaid statutory scheme and the proposition that for production and leading additional evidence in appellate Court, oral or

documentary, is not a matter of right or ipso facto. The parties to an appeal shall not be entitled to produce additional evidence, whether it is testimonial or documentary in the appellate Court, except upon the available existing fact situation enumerated in sub-rule (1) of rule 27 of Order 41 of the Code. In our opinion, in the light of the peculiar facts and special circumstances, and the testimony of driver Ratansingh before the Tribunal at Ex.44, the request made in the Civil Applications for production and resultant leading additional evidence, in this group of two appeals, at this stage, after expiry of almost 16 years, cannot be accepted.

After having considered the facts and circumstances and the relevant proposition of law and the narration of aforesaid facts, we are, fully, satisfied that rejection of both the appeals, cross objections and the Civil Applications would meet the ends of justice. The appeals, cross objections and Civil Applications, shall stand dismissed, leaving the parties to bear their own costs.

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(vjn)